



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TANG CAPITAL PARTNERS, LP.,

Plaintiff,

- against -

BRC Inc.,

Defendant.
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22-CV-3476 (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves Plaintiff Tang Capital's letter motion at Dkt. 69¹ to compel production of documents by four of Defendant BRC's directors (the "Directors"). The motion is denied without prejudice because this Court lacks personal jurisdiction over the Directors. Tang has not presented sufficient evidence to meet its burden to show that any of the directors reside, work, or regularly transact business within 100 miles of this District. As a result, this Court is not the "compliance" court in which the motion to compel must be brought. See Fed. R. Civ. P. 45(c)(2)(A) (subpoena for documents may require compliance only "within 100 miles of where the person resides, is employed, or regularly transacts business in person"); 45(d)(2)(B)(i) (serving party may move to compel in court "where compliance is required"). In addition to the authorities and reasons cited by BRC (Dkts. 73, 85), see, e.g., *Arrowhead Capital Finance, Ltd. v. Seven Arts Entertainment, Inc.*, No. 14-CV-6512, 2021 WL 411379, at *2-3 (S.D.N.Y. Feb. 5, 2021) (denying motions to quash and to compel compliance with subpoena seeking documents from non-party based in California and stating that "[t]he motion is not cognizable in this Court unless

¹ Plaintiff Tang Capital originally filed its letter motion to compel production on June 5, 2023 at Dkt. 69. It resubmitted its letter motion on June 16, 2023 at Dkt. 84.

and until it is transferred to this Court pursuant to Rule 45(f)"); *Nicolosi v. BRG Sports, Inc.*, No. 16-CV-2910, 2019 WL 8158470, at *2 (E.D.N.Y. Dec. 23, 2019) (denying motion to compel because "plaintiff should have moved before the district court in Minnesota where Target's principal place of business is located, and not before this Court"). The Court agrees with counsel for the Directors that the Directors have not waived their right to assert this Court's lack of jurisdiction over enforcement of the subpoena due to either the passage of time or having negotiated with Tang about potential compliance.

The Clerk of Court is respectfully requested to terminate the letter motion at Dkt. 84.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: June 21, 2023
New York, New York